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9 **BEFORE THE**
RESPIRATORY CARE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. 1H-2008-716

13 WILLIAM RHEA WIECK
7575 Linda Vista Road, #77
14 San Diego, CA 92111

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Respiratory Care Board of California.
21 2. On or about November 14, 2008, the Respiratory Care Board of California
22 (Board) received a complete application for a Respiratory Care Practitioner License from
23 WILLIAM RHEA WIECK (Respondent). On or about November 10, 2008, Respondent certified
24 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
25 application. The Board denied the application on or about March 27, 2009.

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JURISDICTION

3. This Statement of Issues is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 3710 of the Code states, in pertinent part, that “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“...

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“...

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).”

“...”

7. Section 3732 of the Code states:

“(a) The board shall investigate an applicant for a license, before a license is issued, in order to determine whether or not the applicant has the qualifications required by this chapter.

1 “(b) The board may deny an application, or may order the issuance
2 of a license with terms and conditions, for any of the causes specified in
3 this chapter for suspension or revocation of a license, including, but not
4 limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6,
5 3755, 3757, 3760, and 3761.”

6 8. Section 3752 of the Code states,

7 “A plea or verdict of guilty or a conviction following a plea of nolo
8 contendere made to a charge of any offense which substantially relates to
9 the qualifications, functions, or duties of a respiratory care practitioner is
10 deemed to be a conviction within the meaning of this article. The board
11 shall order the license suspended or revoked, or may decline to issue a
12 license, when the time for appeal has elapsed, or the judgment of
13 conviction has been affirmed on appeal or when an order granting
14 probation is made suspending the imposition of sentence, irrespective of a
15 subsequent order under Section 1203.4 of the Penal Code allowing the
16 person to withdraw his or her plea of guilty and to enter a plea of not guilty,
17 or setting aside the verdict of guilty, or dismissing the accusation,
18 information, or indictment.”

19 9. Section 3754 of the Code states: “The board may deny an
20 application for, or issue with terms and conditions, or suspend or revoke, or impose
21 probationary conditions upon, a license in any decision made after a hearing, as provided
22 in Section 3753.”

23 10. California Code of Regulations, title 16, section 1399.370, states, in
24 pertinent part:

25 “For the purposes of denial, suspension, or revocation of a license, a
26 crime or act shall be considered to be substantially related to the
27 qualifications, functions or duties of a respiratory care practitioner, if it
28 evidences present or potential unfitness of a licensee to perform the

1 functions authorized by his or her license or in a manner inconsistent with
2 the public health, safety, or welfare. Such crimes or acts include but are not
3 limited to those involving the following:

4 “(a) Violating or attempting to violate, directly or indirectly, or
5 assisting or abetting the violation of or conspiring to violate any provision
6 or term of the Act.

7 “...

8 “(c) Conviction of a crime involving driving under the influence or
9 reckless driving while under the influence.

10 “...”

11 **COST RECOVERY**

12 11. Section 3753.5, subdivision (a) of the Code states:

13 “In any order issued in resolution of a disciplinary proceeding
14 before the board, the board or the administrative law judge may direct any
15 practitioner or applicant found to have committed a violation or violations
16 of law to pay to the board a sum not to exceed the costs of the investigation
17 and prosecution of the case.”

18 13. Section 3753.7 of the Code states:

19 “For purposes of the Respiratory Care Practice Act, costs of
20 prosecution shall include attorney general or other prosecuting attorney
21 fees, expert witness fees, and other administrative, filing, and service fees.”

22 14. Section 3753.1 of the Code states:

23 “(a) An administrative disciplinary decision imposing terms of
24 probation may include, among other things, a requirement that the
25 licensee-probationer pay the monetary costs associated with monitoring the
26 probation.

27 “...”

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1 **FIRST CAUSE FOR DENIAL OF LICENSE**
2 (Conviction of Crimes Substantially Related to the Qualifications,
3 Functions, or Duties of a Respiratory Care Practitioner)

4 15. Respondent's application is subject to denial under section 3750, as
5 defined by section 3750, subdivision (d), and 3752 of the Code, and Title 16 of the
6 California Code of Regulations, section 1399.370, in that Respondent has been convicted
7 of crimes substantially related to the qualifications, functions, or duties of a Respiratory
8 Care Practitioner, as more particularly described in paragraphs 16 through 27, below.

9 **The December 15, 1988 Conviction:**

10 16. On or about June 28, 1988, Respondent was arrested for
11 violations of Vehicle Code section 23152 (a) [driving under the influence of alcohol],
12 Vehicle Code section 23152 (b) [driving with a blood alcohol level of .08% or higher] and
13 Vehicle Code section 27315 (f) [maintaining unsafe seat belts].

14 17. On or about July 13, 1988, Respondent was charged in the case
15 entitled *People of the State of California v. William Rhea Wieck*, Los Angeles County
16 Municipal Court Case No. 88M05095, with violations of Vehicle Code section 23152 (a)
17 [driving under the influence of alcohol], Vehicle Code section 23152 (b) [driving with a
18 blood alcohol level of .08% or higher], and Vehicle Code section 27315 (f) [maintaining
19 unsafe seat belts].

20 18. On or about December 15, 1988, Respondent pled nolo contendere to
21 a violation of Vehicle Code section 23152 (b) [driving with a blood alcohol level of .08%
22 or higher], in the case entitled *People of the State of California v. William Rhea Wieck*,
23 Los Angeles County Municipal Court Case No. 88M05095.

24 19. On or about December 15, 1988, the Court sentenced Respondent in
25 Case No. 88M05095 to three (3) years summary probation, and a 90 day driving
26 restriction.

27 **The December 28, 1994 Conviction:**

28 20. On or about October 21, 1994, Respondent was arrested for
violations of Vehicle Code section 23152 (a) [driving under the influence of alcohol], and

Vehicle Code section 23152 (b) [driving with a blood alcohol level of .08% or higher].

21. On or about November 3, 1994, Respondent was charged in the case entitled *People of the State of California v. William Rhea Wieck*, Riverside County Municipal Court Case No. 315984, with violations of Vehicle Code section 23152 (a) [driving under the influence of alcohol], and Vehicle Code section 23152 (b) [driving with a blood alcohol level of .08% or higher] with an allegation of a prior conviction for violation of Vehicle Code section 23152 (b).

22. On or about December 28, 1994, Respondent pled guilty to a violation of Vehicle Code section 23152 (b) [driving with a blood alcohol level of .08% or higher] with one prior conviction, in the case entitled *People of the State of California v. William Rhea Wieck*, Riverside County Municipal Court Case No. 315984.

23. On or about December 28, 1994, the Court sentenced Respondent in Case No. 315984 to forty-eight (48) months summary probation with terms and conditions including the installation of an ignition interlock device on his vehicle, thirty (30) days in Riverside County Jail, and a fine of \$1,164.00.

The September 28, 2006 Conviction:

24. On or about May 21, 2006, Respondent was arrested for violations of Vehicle Code section 23152 (a) [driving under the influence of alcohol], and Vehicle Code section 23152 (b) [driving with a blood alcohol level of .08% or higher].

25. On or about July 11, 2006, Respondent was charged in the case entitled *People of the State of California v. William Rhea Wieck*, Riverside County Superior Court Case No. RIM485760, with violations of Vehicle Code section 23152 (a) [driving under the influence of alcohol], and Vehicle Code section 23152 (b) [driving with a blood alcohol level of .08% or higher].

26. On or about September 28, 2006, Respondent pled guilty to violations of Vehicle Code section 23152 (a) [driving under the influence of alcohol], and Vehicle Code section 23152 (b) [driving with a blood alcohol level of .08% or higher] with a penalty enhancement pursuant to Vehicle Code section 23578 [driving with a blood

1 alcohol level in excess of .15%] , in the case entitled *People of the State of California v.*
2 *William Rhea Wieck*, Riverside County Superior Court Case No. RIM485760.

3 27. On or about September 28, 2006, the Court sentenced Respondent
4 in Case No. RIM485760 to thirty-six (36) months summary probation with terms and
5 conditions, ten (10) days in the custody of the Sheriff, and a fine and assessment of
6 \$1,391.40.

7 **SECOND CAUSE FOR DENIAL OF LICENSE**

8 (Conviction of a Crime Involving Driving Under the Influence)

9 28. Respondent's application is further subject to denial under section
10 3750, as defined by section 3750, subdivision (d), and 3752 of the Code, and Title 16 of
11 the California Code of Regulations section 1399.370, subdivision (c), in that he has been
12 convicted of crimes involving driving under the influence of alcohol, as more particularly
13 described in paragraphs 16 through 27, above, which are hereby incorporated by reference
14 and realleged as if fully set forth herein.

15 **THIRD CAUSE FOR DENIAL OF LICENSE**

16 (Violation of a Provision of the Act)

17 29. Respondent's application is subject to denial under section 3750, as
18 defined by section 3750, subdivision (g), and Title 16 of the California Code of
19 Regulations, section 1399.370, subdivision (a), in that Respondent has violated, or
20 attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or
21 conspired to violate any provision or term of the Act, as more particularly described in
22 paragraphs 16 through 27, above, which are hereby incorporated by reference and
23 realleged as if fully set forth herein

24 **PRAYER**

25 WHEREFORE, Complainant requests that a hearing be held on the matters
26 herein alleged, and that following the hearing, the Board issue a decision:

27 1. Denying the application of Respondent for a Respiratory Care
28 Practitioner License;

2. Directing Respondent to pay the Respiratory Care Board of California the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and

3. Taking such other and further action as deemed necessary and proper.

DATED: May 29, 2009

Original signed by Colleen Whitestone:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
State of California
Complainant

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